

REMARKS

This Amendment is submitted simultaneously with filing of a Request for Continuing Examination.

In the Final Office Action the Examiner indicated that claims 20-25 were allowable over the art.

The Examiner's indication of the allowability of these claims has been gratefully acknowledged. In connection with this indication, claims 20, 23 and 25 have been amended to be independent, and these claims, together with claims 21, 22 and 24 which depends on claim 20 and 23, should be considered as being in allowable condition.

At the same time applicants have also amended claims 1 and 13, the broadest independent claims related to the inventive method and the inventive machine.

It is respectfully submitted that the new features of the present invention which are now defined in claims 1 and 13 clearly and patentably distinguish the present invention from the prior art.

In accordance with the present invention as defined in claims 1 and 13 the compacting device 24 is not directly situated in the transporting means represented by the crop throughput chute, but instead is located outside the transporting means. The compacting device 24 is rather a separate device (an auxiliary chute) which is only connected with the transporting means and accessible via an aperture. While transporting the harvested crop through the transporting means or the crop throughput chute (with different mass and acceleration) a crop sample is withdrawn and fed to the compacting device 24 for determining its properties by sensors. However, before determining the crop properties of the deviated or separated crop sample, it is necessary to densify this crop sample via the compacting device 24 in order to obtain always proper results.

Turning now to the references and in particular to the patents to Bottinger or Ohlemeyer, it is respectfully submitted that the above emphasized features are not disclosed in these references and can not be derived from them as a matter of obviousness. In both references the devices/sensors for determining crop properties are situated directly in the crop throughput chute and not in a separate auxiliary chute or separate device 24 located outside, as in the applicant's invention defined in claims 1 and 13.

When the method is performed and the machine is designed as in these references, the results always depend on the mass and on the acceleration of the crop flow in the crop throughput chute, which causes inaccurate results of the crop properties. Furthermore, before determining the crop properties by sensors, the crop sample in the references is not separated from the crop throughput chute and is not compressed by a compacting device, which is likewise important to obtain accurate results.

To the contrary, as explained herein above, in the applicant's invention the crop probe is deviated from the transporting means to a compacting device which is located outside the transporting means and is a separate device, and the crop probe is densified via the separate compacting device, for determining the properties of the crop probe by sensors.

The Examiner rejected the claims over the above analyzed references as being anticipated. In connection with the anticipation rejections it is believed to be advisable to cite the decision in *re Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 221 USPQ 481, 485 (Fed. Cir. 1984) in which it was stated:

"Anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim."

Definitely, the references do not disclose each and every element of the present invention as defined in claims 1 and 13.

Some original claims were rejected as obvious from the combination of the references. As for the obviousness rejection, since none of the references teach the new features of the present invention as defined in claims 1 and 17, in order to arrive at the applicant's invention the references have to be fundamentally modified by including into them precisely the specific features which are now defined in the Independent claims. However it is known that in order to arrive at a claimed invention, by modifying the references the cited art must itself contain a suggestion for such a modification.

This principle has been consistently upheld by the U.S. Court of Customs and Patent Appeals which, for example, held in its decision in re Randol and Redford (165 USPQ 586) that

Prior patents are references only for what they clearly disclose or suggest; it is not a proper use of a patent as a reference to modify its structure to one which prior art references do not suggest.

Finally, as explained in detail herein above, the present Invention provides for the highly advantageous results which can not be accomplished by the solutions proposed in the references. It is well known

that in order to support a valid rejection the art must also suggest that it would accomplish applicant's results. This was stated by the Patent Office Board of Appeals, in the case Ex parte Tanaka, Marushima and Takahashi (174 USPQ 38), as follows:

Claims are not rejected on the ground that it would be obvious to one of ordinary skill in the art to rewire prior art devices in order to accomplish applicants' result, since there is no suggestion in prior art that such a result could be accomplished by so modifying prior art devices.

In view of the above presented remarks and amendments, it is believed that claims 1 and 13 should be considered as patentably distinguishing over the art and should be allowed.

As for the dependent claims, these claims depend on the independent claims, they share its presumably allowable features, and therefore they should be allowed as well.

Reconsideration and allowance of the present application is most respectfully requested.

Should the Examiner require or consider it advisable that the specification, claims and/or drawings be further amended or corrected in formal respects in order to place this case in condition for final allowance,

then it is respectfully requested that such amendments or corrections be carried out by Examiner's Amendment, and the case be passed to issue. Alternatively, should the Examiner feel that a personal discussion might be helpful in advancing this case to allowance, he is invited to telephone the undersigned (at 631-549-4700).

Respectfully submitted,



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